



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 14, 2010

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND FACSIMILE AT 305 538 2009

Mr. Hayri Barutcu, Director of Operations
Firefly Mobile Communications, Inc.
119 Washington Avenue, Suite 401
Miami Beach, FL 33139

Re: File No. EB-09-SE-154

Dear Mr. Barutcu:

This is an official **CITATION**, issued to Firefly Mobile Communications, Inc. (“Firefly”), a reseller of wireless services, pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ for violating the digital wireless handset hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Commission’s Rules (“Rules”).² As explained below, future violations of the Commission’s rules in this regard may subject Firefly to monetary forfeitures.

In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.³ The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.⁴ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant standard if they did not come under the *de minimis* exception.⁶ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the

¹ 47 U.S.C. § 503(b)(5).

² 47 C.F.R. § 20.19(i)(1).

³ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (“*Hearing Aid Compatibility Reconsideration Order*”).

⁴ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. § 20.19(b)(1), (2).

⁵ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Dispatch Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁶ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers

hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁷

Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁸ The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).⁹ In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.¹⁰ The Commission also made clear that these reporting requirements apply to service providers that fit within the *de minimis* exception.¹¹

Firefly did not file a hearing aid compatibility status report prior to the January 15, 2009 deadline. The Wireless Telecommunications Bureau referred Firefly's apparent violation of the hearing aid compatibility reporting requirement to the Enforcement Bureau for possible enforcement action. On October 14, 2009, the Enforcement Bureau's Spectrum Enforcement Division issued Firefly, a Mobile Virtual Network Operator, a Letter of Inquiry ("LOI").¹² Firefly responded to the LOI on November 13, 2009.¹³ Firefly requested that its LOI Response be accorded confidential treatment.¹⁴ Although we are not ruling on Firefly's request at this time, we are treating its LOI Response as confidential for the purposes of this Citation.

Under section 20.19(e)(1) of the Rules, "... service providers that offer two or fewer digital wireless handsets in an air interface in the United States are exempt from the [hearing aid compatibility wireless handset] requirements of this section in connection with that air interface, except with regard to the reporting requirements in paragraph (i) of this section."¹⁵ As a service provider offering only two digital wireless handsets, Firefly is exempt from the hearing aid compatibility handset deployment and consumer information requirements, but is not exempt from the reporting requirements of section 20.19(i)(1).

or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁷ See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁸ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

⁹ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

¹⁰ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹¹ *Id.* ¶ 99.

¹² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Hayri Barutcu, Director of Operations, Firefly Communications, Inc. (October 14, 2009).

¹³ See Letter from Steven A. Augustino, Esq. and Denise N. Smith, Esq., Kelley Drye & Warren, LLP to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (November 13, 2009).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 20.19(e)(1).

Under section 20.19(i)(1) of the Rules, all service providers, including resellers, must file hearing aid compatibility status reports initially on January 15, 2009, and annually thereafter.¹⁶ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether Firefly is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. Based on the record before us, we find that Firefly did not file the January 15, 2009 report.¹⁷ Accordingly, Firefly violated the hearing aid compatibility status report filing requirements set forth in section 20.19(i)(1) of the Rules.

Firefly should take prompt action to ensure that it does not continue to violate the Commission's wireless hearing aid compatibility rules. If, after receipt of this Citation, Firefly violates the Communications Act or the Commission's rules or orders in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$150,000 for each such violation or each day of a continuing violation.¹⁸

Firefly may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Firefly's response should specify the actions that it is taking to ensure that it does not violate the Commission's rules governing the filing of hearing aid compatibility status reports in the future.

The nearest Commission field office appears to be the Miami District Office, in Miami, Florida. Please call Ava Holly Berland at 202-418-2075, if Firefly wishes to schedule a personal interview. Firefly should schedule any interview to take place within 30 days of the date of this letter. Firefly should send any written statement within 30 days of the date of this letter to:

Ava Holly Berland
Spectrum Enforcement Division
Enforcement Bureau
Re: EB-09-SE-154
Federal Communications Commission
445 12th Street, S.W., Rm. 4-C448
Washington, D.C. 20554

Under the Privacy Act of 1974,¹⁹ we are informing Firefly that the Commission's staff will use all relevant material information before it, including information that Firefly discloses in its interview or written statement, to determine what, if any, enforcement action is required to ensure Firefly's compliance with the Communications Act and the Commission's rules and orders.

The knowing and willful making of any false statement, or the concealment of any material fact, in response to this citation is punishable by fine or imprisonment.²⁰

¹⁶ 47 C.F.R. § 20.19(i)(1).

¹⁷ To date, Firefly still has not filed the January 15, 2009 report.

¹⁸ See 47 C.F.R. § 1.80(b)(3).

¹⁹ See 5 U.S.C. § 552a(e)(3).

²⁰ See 18 U.S.C. § 1001.

We thank Firefly in advance for its anticipated cooperation.

Sincerely,

Kathryn Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

cc: Steven A. Augustino, Esq. and Denise N. Smith, Esq.
Kelley Drye & Warren
3050 K Street, N.W.
Suite 400
Washington, DC 20007